



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,982	10/09/1998	FREDERIC KLEIN	032475-001	9420

21839 7590 08/08/2003

BURNS DOANE SWECKER & MATHIS L L P
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

PORTNER, VIRGINIA ALLEN

ART UNIT	PAPER NUMBER
----------	--------------

1645

DATE MAILED: 08/08/2003

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/155,982

Applicant(s)

KLEIN ET AL.

Examiner

Ginny Portner

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 11 April 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 17-19,22,24,26,28-30,31,33-35,37.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: _____

Continuation of 2. NOTE: New claims 40-73 are proposed which raise new issues, especially claims 44-46, 51-55 with respect to necessitating new grounds of search and rejection based upon prior art..

Continuation of 5. does NOT place the application in condition for allowance because: The Declaration of Gradinaru Dragos filed together with the proposed amended claims After Final is ineffective to overcome the prior art rejections made of record because: The proposed claim amendment of at least claim 1 is to cancel the claim. Paragraph 6 of the Declaration seeks to argue that claim 1 defines over the prior art of record. If the Declaration is viewed as addressing the claims that are pending in the instant Application and not the Amendment with which it was submitted, it is the position of the examiner that Akuzawa et al disclosed monoclonal antibodies that did not react with other equine uterine infection causing bacteria. This statement makes clear that the monoclonal antibodies were Taylorella equigenitalis specific and would not cross react with the bacteria recited in the claims. No evidence has been submitted to show that the monoclonal antibodies of Akuzawa et al are non-specific and that the statements made in the published article are not true. Additionally, with respect to Friedrich, the Declaration discusses a dissertation not applied to the claims, but none-the-less, provides evidence that the monoclonal antibodies of Friedrich are specific for Taylorella equinallis and would not cross react with the recited pathogens of the instantly pending claim 1 (Arguments set forth in paper number 19, paragraphs 23-34 are incorporated herein by reference)..


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600